UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, Ca. 94105-3901

SEP 0 8 1993

James M. Lents, Ph.D.
Executive Officer
South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, California 91765-4182

Re: Comments on Revised Draft RECLAIM Rules Package Dated July, 1993

Dear Dr. Lents:

This letter contains the Environmental Protection Agency's (EPA) comments on the draft RECLAIM rules package dated July, 1993. In this correspondence, EPA provides the District with comments on both the RECLAIM rules and the accompanying documentation (Volumes I and V). These comments address the primary issues that EPA believes are essential to the approvability and success of the RECLAIM program.

EPA has evaluated the draft rules package using applicable sections of the federal Clean Air Act Amendments of 1990 (CAA) and other EPA policy including, but not limited to the guidance found in the recently proposed Economic Incentive Program (EIP) Rules (58 FR 11110 - February 23, 1993).

EPA again commends the South Coast Air Quality Management District (SCAQMD) for its efforts in developing economic incentive regulations to control emissions from nitrogen oxides (NO_x) and sulfur oxides (SO_x) from a variety of sources.

EPA has identified two primary issues with respect to RECLAIM that will affect the success of RECLAIM. These issues are: 1) New Source Review and 2) Enforcement/Enforceability. With respect to these two issues, please see the appropriate attachments to this letter. However, EPA notes that the package we are commenting on in this letter is not the same package that will be before the Board on September 9 and 10. To the extent that there are differences in the two packages as well as to the extent that our previous comments have not been addressed by either

package, EPA reserves its right to review and comment as appropriate on the most recent package both in the current round of consideration as well as the federal approval process.

Thank you for the opportunity to comment on this draft rules package. EPA is prepared to deliver testimony before your Governing Board that reflects these comments. Please note that EPA has identified issues in this letter that, if not satisfactorily resolved, will lead to the disapproval of the RECLAIM program at the federal level. If you have any questions on this matter, please call me at (415) 744-1219 or Ken Israels at (415) 744-1188.

Sincerely,

David P. Howekamp
Director
Air & Toxics Division

attachments

cc: Pat Leyden, SCAQMD
Mike Scheible, CARB

Attachment A - Enforcement/Enforceability of RECLAIM

With respect to enforcement and enforceability in RECLAIM, EPA has identified the following issues that may affect the federal approvability:

1) The August 18, 1993 Penalty Proposal,

2) Executive Officer Discretion in RECLAIM, and

3) Emissions Quantification in RECLAIM

1) The August 18, 1993 Penalty Proposal:

We are reviewing the penalty approaches outlined in the July, 1993 RECLAIM rules and at the August 23 Steering Committee meeting. The July, 1993 penalty approach, as we outlined in our August 17, 1993 letter, does not provide adequate deterrence to noncompliance in RECLAIM and therefore would not be approvable by EPA. With respect to the August 23 penalty approach, we have raised several significant concerns regarding the adequacy of deterrence for statutory maximum penalties for emission cap exceedances, and have suggested possible options for resolving these concerns. However, EPA's desire to assist the District in developing a workable and enforceable RECLAIM program and given that the Board will not vote to take action on RECLAIM until October, EPA would be willing to continue the process of discussions with affected parties in an effort to resolve this issue, and we believe that this issue can be resolved.

2) Executive Officer Discretion:

Executive Officer (EO) discretion has been reduced in the current RECLAIM package. However, problematic usage of EO discretion can still be found in rule 2004, 2005, 2011, and 2012. Our concerns about the District's use of EO discretion can be resolved in several ways:

The discretion found in rule 2004 (rule 2004(e)(1)) must be deleted. An acceptable version of this provision would be:

> "Any Quarterly Certification of Emissions which is inaccurate at the time of submission shall constitute a violation of this rule..."

In the absence of such deletion, rule 2004(e)(1) would not be fully enforceable at the federal level.

The discretion found in rule 2005 (rule 2005(b)(1)(B)) can be addressed by submitting the alternative modeling procedures discussed in this provision for EPA approval and inclusion in the SIP, pursuant to requirements found in 40 C.F.R. 51.160(f) (see 58 FR 38816 dated 7/20/93). This would require the District to submit these modeling procedures as a SIP revision prior to the use of these procedures in permitting new sources.

The discretion found in rules 2011 and 2012 (particularly rule 2011(c)(2)(B) and rule 2012(c)(2)(B)) can be resolved in the following way:

For sources subject to the Title V program, the District would revise/submit SIP rules with director's discretion provisions to require that alternative test methods, recordkeeping, or monitoring provisions must be as stringent in accuracy, reliability, reproducibility, and frequency as the otherwise applicable SIP requirements. The rule would require alternative provisions to be submitted to EPA along with supporting documentation 90 days in advance of the submittal to EPA of the proposed Title V permit. EPA will review the alternative and send a tentative determination of approval/disapproval back to the state/local district by the end of the 90 day period. Any public comment concerning the alternative method submitted during the Title V public comment period must be transmitted to EPA within 5 days after the end of the public comment period. Failure to provide this 90 day EPA review period constitutes cause for objecting to or reopening the permit. The public participation process for these alternatives will occur as part of the Title V program public process. The EPA tentative approval/disapproval would become final at the conclusion of the permit issuance process, if EPA does not object to the permit issuance, subject to the public petition process for EPA objections. If an alternative method is not approved by EPA, the otherwise applicable relevant SIP provisions would apply.

Similarly, for sources not subject to an approved Title V program, SIP rules with director's discretion provisions would be revised/submitted to require that alternative test methods, recordkeeping, or monitoring provisions must be as stringent in accuracy, reliability, reproducibility, and frequency as the otherwise applicable SIP requirements. The rule would also require that these alternative provisions and supporting documentation be submitted to EPA for a 90 day review period. Upon receipt of the alternative, EPA will publish a public notice providing a 30 day public comment period, unless the state/local district wishes to provide such notice. Any comments received would be considered

during EPA's review of the alternative. EPA will review the alternative and send a letter back to the state/local district by the end of the 90 day period stating whether we approve or disapprove the alternative. If an alternative method is not approved by EPA, provisions of the otherwise applicable SIP provisions will apply.

An example follows of specific language that could be used to correct a rule allowing director's discretion in test methods:

> The VOC content shall be determined by using EPA Reference Method ___ or an alternative method approved by the Executive Officer. For purposes of a federally approved implementation plan, the alternative method will apply in place of EPA Reference Method ___ only if:
>
> > (1) the SCAQMD determines that the alternative method is as stringent in accuracy, reliability, reproducibility, and frequency as the Reference Method, in accordance with guidelines approved by EPA as a SIP revision and submits the alternative method approved pursuant to such determination to EPA along with supporting documentation for a 90 day review, and
> >
> > (2) EPA determines that the alternative method is as stringent in accuracy, reliability, reproducibility, and frequency as the Reference Method, in accordance with guidelines approved by EPA as a SIP revision and approves the alternative method pursuant to such determination.
>
> The Executive Officer's determination of approval is not binding on EPA.
>
> For sources subject to an approved Title V program, an alternative method is approved for the source by EPA if it is incorporated in an issued Title V permit (to which EPA has not objected), subject to the conclusion of the process for public petitions for EPA objections, provided that either: 1) the 90 day EPA review period has been completed prior to submittal to EPA of the proposed Title V permit, or 2) EPA provides written approval. Any public comments submitted during the Title V public comment period concerning the alternative method shall be transmitted to EPA no later than five days after the end of the public comment period. Failure to provide the 90 day EPA review period prior to submittal to EPA of the proposed Title V permit constitutes cause for EPA's objecting to or reopening the permit.
>
> For sources not subject to an approved Title V program, the 90 day

EPA review period must include a 30 day public notice and comment period, which may be provided either by the District or by EPA so long as the public comments are directed to EPA. An alternative method will be approved or disapproved by EPA by letter. An exceedance of the limits established by this rule through the use of any of the above methods constitutes a violation of this rule.

In accordance with the processes outlined above, the District SIP rules must include language to the effect that the decision to use an alternative will be governed by guidelines. These guidelines must be submitted and approved as SIP revisions. EPA will assist the District in their development of guidelines. EPA will also send a letter outlining the necessary supporting documentation required to be submitted with the various alternatives to the otherwise applicable SIP requirements. Once every six months, EPA will publish a notice in the Federal Register listing all our actions on these alternatives.

We believe the above procedure is a workable solution for handling executive officer's discretion provisions in the SIP.

The discretion found in rules 2011 and 2012 (rules 2011(d)(2)(A), (d)(4), (d)(5), (f)(3) and 2012(d)(2)(B), (e)(2)(A), (f)(3), (h)(3)) must be eliminated. Alternatively, if the District included appropriate references to the protocols regarding how equivalence in accuracy, reliability, reproducibility, and frequency will be determined, EPA could approve an approach identical to that discussed relative to 2011(c)(2)(B) and 2012(c)(2)(B).

3) Emissions Quantification in RECLAIM:

The emissions quantification protocols in the RECLAIM rules are incomplete. In both the rules that implement these protocols and the protocols themselves, the District allows for alternative monitoring systems to be used. However, in the July 1993 package, no specifics for the means of defining alternative monitoring systems are found. In fact, the package refers to guidelines to be developed by October 31, 1993. This is a significant omission from EPA's point of view. EPA can not perform a thorough review of RECLAIM if critical elements are omitted. Further, EPA can not approve a program that is incomplete (see 40 C.F.R. Part 51, Appendix V, paragraphs 2.2(f) and (g)).

EPA believes that, to conduct effective emissions audits of this program, that the measured variables found in Tables 2011-1 and 2012-1 should be reported along with the reported data. This would mean, for example, that for major NO_x sources, the stack NO_x concentration, exhaust flow rate, and status codes (or the stack NO_x

concentration, stack O_2 concentration, fuel flow rate, and status codes) as well as the total daily mass emissions from each source would be reported on a monthly basis (or transmitted on a daily basis). This underlying data is vital to emissions verification in RECLAIM.

The exemption of sources that are less than 10 tons per year from all monitoring in RECLAIM found in the protocol rules is unacceptable to EPA (see rule 2012 (c)(1)(J) and Volume V, Table 1-A). This would imply that some RECLAIM emissions units will not be covered by any emissions measurement protocols. These provisions should be deleted or redrafted as appropriate.

Attachment B - New Source Review in RECLAIM

With respect to new source review (NSR) provisions in RECLAIM, EPA found the following issues that may affect the federal approvability of RECLAIM.

1) Offset requirements in RECLAIM, and

2) Demonstrating equivalency with the statutory 1.5:1 offset requirement.

1) Offset requirements in RECLAIM:

The EPA made several comments in its letter of July 15, 1993 regarding the provisions of RECLAIM that implement the offset provisions of section 173 of the Clean Air Act. After additional discussions with the South Coast staff, EPA has agreed to reconsider its position that RECLAIM must require sources to secure five years of offsets in order to obtain a permit for new or modifying sources. As EPA noted in its prior letter, EPA's general policy has been to require offsets that are permanent. This is both grounded in explicit regulations and policy statements and the general statutory requirement that the emission reductions secured will "assure" that the new emissions will be offset so as to protect the CAA reasonable further progress requirements (RFP).

In urging that the District adopt a five year minimum, EPA sought to balance the need to assure that the offset will be in place with the unique nature of the RECLAIM program. The EPA recognized that permanent offsets would be difficult to secure in a universe of one-year emission reductions. The EPA was also influenced by the realities of allowing sources to build and commence operations when the offsets are in question. While EPA or the permitting authority may have the legal right to shut the source down or take other enforcement actions, the equities dramatically shift once the source is built and operations are underway. Thus, EPA favored a five-year offset requirement as a compromise.

The District maintains that given the unique nature of RECLAIM, a one year offset requirement is sufficient to meet EPA's policy concerns. First, it notes that where all major stationary sources (and most "minor" sources of four tons and above) are subject to a declining cap, the burden on the offset requirement to "assure" that new emissions are consistent with RFP is greatly reduced. Second, by including a new source into the general RECLAIM market scheme, the new source will face the same detection opportunities and enforcement powers as underpin the entire RECLAIM program. Thus if EPA is satisfied that there are sufficient enforcement powers to prevent an existing source

which failed to secure sufficient credits from operating at a level it operated at in the past, then EPA should reach the same conclusion regarding a new source that fails to provide the credits for its new year of operation.

After careful review of these and other contentions, EPA is satisfied that within RECLAIM, EPA could allow a new source review permit to be issued with only one year's worth of offsets secured up front. However, EPA must caution that this decision is predicated upon several conditions. First, section 173(c) requires that the offset be "in effect and enforceable" by the time the new source "commences operation." As has been discussed with the District legal staff, this provision requires that the new source secure the year of emissions reduction credits before it starts operations in that year. In other words, while a source need only secure one year of offsets to be permitted, it must continue to secure the same number of emission reduction credits for each successive year of operation prior to the beginning of that year (i.e., the permitted amount of credits). The source cannot, under any circumstances, operate in a new year without having purchased its offsetting credits for that year. (If some of those credits remain unused at the end of the year, the source can only dispose of them during the reconciliation period.)

In addition, and as discussed in our prior comment letter, this requirement that the new or modifying source secure the necessary offsets prior to operating in any year must be secured with a federally enforceable permit condition that requires the source to shut down (or curtail its operations as necessary) upon any lapse of offsetting emissions credits.

2) Demonstrating equivalency with the statutory 1.5:1 offset requirement:

RECLAIM only requires new and modifying sources to secure offsets at a 1 to 1 ratio. However, section 182(e) of the CAA requires the District to secure 1.5 to 1 offsets for external offsetting (unless the District can demonstrate that all sources meet BACT, in which case the ratio drops to 1.2 to 1. The District must thus demonstrate that it will secure additional emissions reductions for RECLAIM sources equivalent to the difference in the offset ratio. However, while EPA and the District have had extensive discussions regarding possible means of demonstrating equivalency, the District has not, to this date, identified an approach that is acceptable to EPA. Since the equivalent emission reductions need not come from RECLAIM, this issue does not necessarily block EPA approval of RECLAIM. However, if equivalent, approvable emissions reductions are not identified, the District's NSR rule and, depending on the circumstances, its RFP and attainment submissions may not be approvable. The EPA will continue to work with the District to resolve this issue.

In addition, EPA has included comments with respect to rule 2005. We note that the following comments are not approvability issues as the July, 1993 package is drafted.

In rule 2005, the District proposes language for determining whether a change will result in an increase in emissions and thus constitute a "modification" and trigger federal new source review. (See CAA section 182(e)(2)) The District proposes to use a methodology that compares a unit's actual emissions before the change to its maximum annual emissions after the change. The EPA generally favors this methodology since it captures both changes to the emissions rate of the unit as well as changes that increase the utilization of the unit. Either factor can result in a real increase in annual mass emissions.

Recently, the District has sought EPA's input on a simpler measure to determine whether there has been an emissions increase. The District notes that under RECLAIM,. existing sources must comply with a mass emissions cap which prevents a change from resulting in any increase in emissions to the environment. Because of this, it contends that a test that focuses only on the emissions rate should be acceptable. Ordinarily, EPA does not believe that such a test accurately predicts when an emissions increase will occur since a change that lowers the emissions rate but increases the utilization of the unit could still result in an increase in the source's tons-per-year emissions (the measure of interest for federal NSR purposes.) Since EPA's concerns with increased utilization are eliminated by the mass emissions cap system, a measure based solely on an emissions rate test may be approvable for RECLAIM sources. EPA's final approval of this must await the specific language incorporating this new methodology.